UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2000/SR.7
9 January 2001

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 7 August 2000, at 10 a.m.

Chairperson: Ms. MOTOC

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GE.00-14652 (E)

The meeting was called to order at 10.10 a.m.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

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(agenda item 3) (continued) (E/CN.4/Sub.2/2000/11, E/CN.4/Sub.2/2000/NGO/8 and 15; A/CONF.189/PC.1/13 and Add.1)

1. The CHAIRPERSON invited the Sub-Commission to continue its consideration of Mr. Bossuyt's report on affirmative action (E/CN.4/Sub.2/2000/11).

2. Ms. WARZAZI said that the expression "favourable discrimination" meant just what it said: it was favourable, because its aim was, by means of special measures, to put an end to negative and damaging discrimination which was contrary to the principle of equality. The first international instrument to provide for such measures had been the International Convention on the Elimination of All Forms of Racial Discrimination. Article 2, paragraph 2 of the Convention, which concerned those special measures, specified their temporary character. The important question for the experts of the Sub-Commission was not what limits should be set on affirmative action but what results it should make it possible to achieve.

3. In General Comment No. 5, the Committee on Economic, Social and Cultural Rights declared that special treatment could legitimately be granted to persons with disabilities. It was important not to limit that provision to persons with physical disabilities. For example, a lack of education constituted a serious handicap for a woman, in terms of access to employment, training or health care. The question should be asked why the Committee on Economic, Social and Cultural Rights had not made it a specific obligation for States to make additional resources available for the application of special measures to assist disadvantaged groups.

4. In its general comment on article 26 of the International Covenant on Civil and Political Rights, the Human Rights Committee rightly pointed out, with regard to special measures, that they were a case of "legitimate differentiation". It would be interesting to examine the reasons why the Human Rights Committee was considerably more committed on the issue of equality than the Committee on Economic, Social and Cultural Rights.

5. In paragraph 18 of the report, she did not follow the reasoning behind the assertion that equality did not mean identity of treatment for all. She believed that if two people were not treated in exactly the same way, there could be no equality. For Muslims, that was a weighty argument against polygamy. It was written in the holy book that any man capable of treating several women equally well could marry them all. However, it was added that, since that was

impossible, each man should marry just one. It had to be one thing or the other: either there was not equality of treatment between individuals and the situation needed correcting, or there was equal treatment for all and therefore no reason for States to make distinctions, except of course for the distinction between nationals and non-nationals, in which case States had to declare their reasons clearly.

6. With regard to paragraph 52 of the report, Ms. Warzazi did not understand why a distinction needed to be drawn between the terms "discrimination" and "distinction". It would be more sensible to stick to the definition found in the International Convention on the Elimination of All Forms of Racial Discrimination which provided that "racial discrimination" should be taken to mean "any distinction, exclusion, restriction or preference based on race ...". That definition was all the more important because it justified affirmative action.

7. She would be interested to know exactly which basic rights were being referred to in paragraph 64 of the report and how the groups mentioned were particularly disadvantaged, since they had been the victims of previous discrimination.

8. Setting quotas in order to enable women to find jobs in certain positions could never constitute a distinction. It was not a matter of depriving men of their rights, but taking away rights that did not belong to them. Certainly, it would be preferable for special measures not to last indefinitely, but in view of the reality of the current situation, it would be a long time before the full enjoyment of all human rights was guaranteed for all.

9. Finally, she was sure that the Special Rapporteur's report would play a very important role in making Governments more aware of the benefits of affirmative action.

10. Mr. OLOKA-ONYANGO said that affirmative action was just one of the means by which it was possible to combat the scourge of discrimination, which nowadays was present in more subtle, but no less pernicious, forms than before. Affirmative action must not be purely symbolic; it must lead to a genuine improvement in the situation of victims of discrimination in all respects, whether they constituted a minority, as they did in the United States, or a majority, as in South Africa. Greater attention should be given to the root of the problem, which was to be found in the institutional or structural dimensions of racism and sexism. Given the extent of the problem, it was unlikely that measures such as affirmative action would ever be sufficient to provide a solution.

11. As the World Conference against Racism drew near, it was important not to lose sight of the connections between globalization and racism. Ample evidence of that link could be found if one considered who were the 500 most wealthy people in the world and who were the leaders of the multilateral financial institutions which decided the fate of the countries of the South. Such imbalances at the international level would continue to reduce the effectiveness of any reforms made at the national level.

12. The World Conference against Racism was likely to amount to nothing more than hot air if the necessary political will to combat racial discrimination effectively continued to be lacking.

13. Ms. MBONU congratulated Mr. Bossuyt on his report, which should be seen as an essential instrument to be used by Governments to promote the position of certain backward and underprivileged sectors of the population. She suggested that the Special Rapporteur should indicate, in his next report, the causes of the situations he had described. Were the causes religious or cultural, were they linked to colonialism, to years of institutionalized discrimination, as was the case of apartheid in South Africa, or to years of slavery, as in the case of African Americans in the United States? She would like to know the answers to those questions before she could agree with the assertion that affirmative action measures needed to be temporary. She conceded that such measures should be phased out as soon as they had achieved their objectives, but said that, in her view, the emphasis should be placed on ensuring the achievement of those objectives and not on limiting the duration of the measures in question. Could anyone predict how long it was going to take to remedy the ills of apartheid, to achieve the emancipation of the indigenous peoples or to achieve sexual equality, even among United Nations employees?

14. The special measures provided for in the Convention on the Elimination of All Forms of Discrimination against Women could not be described as "reverse discrimination" or "discrimination in favour of women" as France and the United Kingdom had insisted. They were, in fact, designed to right the wrongs inflicted on women in the past.

15. Finally, she hoped that, in response to the questionnaire sent out by the Special Rapporteur, States would give concrete examples of affirmative action and assess the results of such action.

16. Mr. OGURTSOV said that he had read with great interest Mr. Bossuyt's report on the concept and practice of affirmative action, but he nevertheless shared Mr. Fan's view that it was slightly too academic.

17. Special measures, or reverse discrimination, were perceived very differently depending on one's particular standpoint, i.e. whether one belonged to one of the minorities receiving assistance or to the majority. The preliminary report told indirectly of the reaction of the majority to affirmative action through descriptions of cases settled in the courts. Affirmative action achieved its genuine objective when, for persons belonging to a minority, their difference ceased to be a source of tension in society. In order for that to happen, special measures should not be aimed only at minorities, but seek to achieve the consolidation of society as a whole. He believed that States should also have been asked in the questionnaire to indicate: the reaction of public opinion to affirmative action programmes, and to say whether the majority of the population had supported them; any measures taken to raise awareness among the majority of the population; the evolution of public opinion throughout the application of special measures and the way in which those programmes influenced the perception held by the majority of a given minority.

18. He asked whether the Special Rapporteur could give more attention to the question of the duration of the application of affirmative action programmes. He suggested that the following proposition should be given some thought: if a temporary measure was applied for longer than one generation, either that suggested it was ineffective, or it was no longer temporary.

19. Mr. BENGOA said he hoped that, in his next report, the Special Rapporteur would address the issue of affirmative action in international relations, for instance in international trade. He recalled that, a few years previously, the United States had considered abolishing the banana export quotas enjoyed by some small Caribbean States, on the pretext of ensuring market equality and transparency. A senior American anti-narcotics official had said at the time that such a measure would merely encourage those countries to turn to the cultivation of crops used for the manufacture of narcotic drugs. That example demonstrated that in the context of development and collective rights, equality in formal and abstract terms could actually exacerbate inequalities.

20. Mr. KARTASHKIN paid tribute to Mr. Bossuyt for the quality of his report on affirmative action, an area which constituted an interface between international law and national legislation. Special measures taken as affirmative action aimed to put an end to discrimination in numerous sectors, including that of education. The enjoyment of equal rights did not mean identity of treatment. For example, in many countries, higher education institutions kept a certain number of places for students belonging to certain disadvantaged groups. With that in mind, the Working Group on Minorities should consider the issue of affirmative action very carefully.

21. The report said that measures taken as affirmative action must be temporary. However, it had to be acknowledged that, very often, such measures had to be applied for many years before achieving the objectives which had led to their adoption.

22. With regard to the World Conference against Racism, he hoped that its agenda would include the issue of the re-emergence of nazism, which was being witnessed not only in France and Austria, as Ms. Warzazi had pointed out, but in other countries too.

23. Mr. GUISSÉ asked to what extent affirmative action took into account the events of the past, which often constituted a barrier to the enjoyment of economic, social and cultural rights. Since international relations had created an unjust world economic order, affirmative action should also aim to redress economic imbalances at the international level. Thus, attention should be given to the problems presented by debt and multinational companies, as well as to the possible dangers posed by the World Trade Organization and globalization. There were numerous human rights violations in all those areas.

24. He said that, in his view, overly selective measures should be avoided, since they were likely to have negative effects in the long term.

25. Lastly, with regard to the southern African countries, where the scourge of apartheid continued to constitute a source of violence and insecurity for the black population, affirmative action could also involve the redistribution of land, which might help to bring peace there.

26. Mr. RODRÍGUEZ CUADROS said that the structure of the report, divided into two parts, one dealing with the concept of affirmative action in international law and the other with limits set on affirmative action measures, gave a systematic and pertinent presentation of the issue. He shared Mr. Bossuyt's view that affirmative action was an integral part of

international law, and human rights law in particular. The second part of the report was in his view the most important, because it presented the conceptual and legal problems posed by the development of affirmative action in international law.

27. He agreed with Mr. Bengoa and Mr. Guissé that further consideration needed to be given to the way in which affirmative action was integrated into international law. In terms of legislation, it was precisely in the areas of international economic law and commercial law that affirmative action measures were most developed. The same was true for the right to development, which was an essential component of human rights.

28. One of the few rules of positive law in that area was to be found in the developing countries' right to differential treatment. Since the first United Nations Conference on Trade and Development (UNCTAD), in 1964, the principle of affirmative action had become steadily more widely accepted in trade relations, in which differential treatment was not seen as a form of discrimination, but rather a form of "differentiation". Thus, article 24 of the General Agreement on Tariffs and Trade (GATT) of 1994 provided for affirmative action essentially through the granting of non-reciprocal concessions to developing countries. Preferential treatment for those countries had also inspired widespread systems of preferences, such as that established by the European Union. Furthermore, the Lomé Convention had been inspired by the concept of affirmative action. He suggested that the most important laws governing affirmative action in the context of commercial and economic relations, particularly with regard to the right to development, should be included in Mr. Bossuyt's report.

29. Two limits to affirmative action were described in paragraphs 59 to 62 of the report, namely the need for such action to be temporary and non-discriminatory. Nevertheless, the problem lay in deciding which were the cases in which the differences found justified affirmative action. A partial reply to that question was provided in paragraph 60, in which a legal argument was presented enabling a distinction to be drawn between cases which did and those which did not justify such action. He suggested that the Special Rapporteur should develop those paragraphs, which he believed were essential, and include examples therein.

30. He said that more thought should also be given to the limits to affirmative action. If the limit concerning its temporary character, which was certainly important but not decisive, and the notion of non-discrimination, were retained, it would not be possible to define some workable legal criteria on which to base the distinction. Consequently, two additional conditions could be added: first, affirmative action must encourage the realization of the right or freedom in question; secondly, it must always be taken with respect for democracy.

31. Mr. YOKOTA shared Ms. Warzazi's concern about the re-emergence, in some countries, of the idea of racial supremacy, which was unanimously rejected by the international community. That trend must be stamped out completely. Since it was a responsibility of States to protect human rights, failure on their part to take immediate steps to put an end to racial discrimination would imply a share of the blame for its development.

32. Mr. Rodríguez Cuadros had raised two important points: first, the idea that affirmative action must be developed with regard to international economic rights and trade relations, since there were inequalities in those areas; secondly, the idea that special measures should be

considered from a positive, rather than a negative, angle. Certain social groups were opposed to special measures because of a belief that they were designed to deprive them of a right. That conception was mistaken. Affirmative action could be beneficial not only to marginalized groups (women, indigenous peoples, minorities, migrants, etc.), but also to the privileged classes. Thus, in Japan, since the Second World War, measures had been taken to combat discrimination and to make society more equal. The participation of marginalized groups must be encouraged, because it was beneficial to society as a whole. Furthermore, the objective of affirmative action was not only to improve the status of marginalized groups, but also to promote peace, which was what the whole of the international community desired.

33. With regard to the elimination of racial discrimination, he referred to the excellent report presented at the previous session by Mr. Weissbrodt on the rights of non-citizens (E/CN.4/Sub.2/1999/7). Since international relations were still essentially based on relations between States, the situation with regard to human rights must be studied in terms of the relations between States and individuals, and the legal bonds that existed between individuals and the State of their nationality. Existing international law allowed certain forms of discrimination based on nationality or citizenship, as in the case of reciprocity, for example. Thus, the rights and privileges that a State granted to citizens of another State depended on the rights and privileges that the latter granted to citizens of the former. That being the case, non-citizens would be treated differently from country to country according to their nationality.

34. More detailed analysis should be carried out in four areas. First of all, a clarification of terminology was required, for there were differences between "citizenship" and "nationality" which could sometimes give rise to serious legal problems. Secondly, a study needed to be carried out of countries in which, due to the existence of different categories of citizens, members of the lowest social categories were treated less favourably than non-citizens. Thirdly, with regard to international law, two important elements of reciprocity, namely the most-favoured-nation clause and the rules of the World Trade Organization, should be subjected to more detailed scrutiny. Fourthly, the study of non-citizens should also address the situation of stateless persons.

35. Lastly, he proposed that Mr. Weissbrodt should be appointed Special Rapporteur and asked to continue to study the issue of non-citizens.

36. Mr. EIDE said that there was a sector-specific issue which needed to be taken into account, both within the scope of the report on affirmative action and in relation to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, namely discrimination in the area of criminal justice. Developments in that regard were far from encouraging. He drew attention to the fact that, even during the apartheid era, the proportion of Blacks imprisoned in the United States was higher than in South Africa.

37. There were a number of reasons why members of the most disadvantaged social groups came into conflict with the law more easily. The legal system must therefore be more constructive with regard to those people, which meant that there was a need for affirmative action in that specific sector. Action should be taken regarding not only racial groups, but also indigenous peoples and aliens. In Europe, the proportion of imprisoned aliens was steadily increasing. That was doubtless due to the reprehensible behaviour of the aliens concerned, but

also partly because many of them were in a vulnerable position in their relations with the police and with regard to criminal procedure. Very often, they failed to understand what was happening to them, even when interpreters were present. He suggested that Mr. Bossuyt should adopt a sector-based approach to affirmative action, which was likely to encourage a more constructive attitude to criminal justice.

38. Mr. PARK agreed with Mr. Bossuyt that affirmative action measures had a basis in international law, particularly in the two International Covenants. It was disappointing that Governments had not yet replied, owing to lack of time, to the questionnaire sent by the Special Rapporteur, who was consequently unable to give concrete examples of the ways in which measures were applied.

39. Paragraph 83 of Mr. Bossuyt's report, which contended that affirmative action measures were temporary and compensatory, aimed at correcting conditions that impaired the enjoyment of equal rights, while protective measures for minorities were aimed at conserving a group's identity, was debatable, since affirmative action measures should be pursued for as long as inequalities remained. Affirmative action constituted a first step towards addressing the problem of racial discrimination but it was only the bare minimum of a response.

40. Ms. ZERROUGUI said that Mr. Bossuyt's report focused mainly on affirmative action in terms of States' obligations with regard to internal affairs. However, since globalization tended to displace decision-making powers, it was important to ask how the principle of affirmative action would be applied when the State was no longer in a position to decide or lacked the necessary means to ensure respect for that principle.

41. Ms. HAMPSON said that, over the previous 12 months, serious conflicts had arisen in the Solomon Islands, Fiji and the Moluccas where discrimination, whether on the grounds of race, ethnicity or religion, had played a significant role. The situation was particularly tragic in Fiji, a multi-ethnic country in which the principle of equality before the law was not respected. She expressed the hope that the international community and the Commonwealth would exercise their influence to ensure that the significant minority of Indian origin did not become refugees.

42. In Kosovo, where ethnically motivated attacks and killings were routine, the international community was in effective control of the territory, and must take any measures that were required.

43. The discrimination suffered by the Roma throughout Europe was another issue that would be examined under agenda item 8.

44. Discrimination was a complex issue because it often overlapped other issues. Furthermore, in many cases, discrimination concerned the actions of individuals. As a result, States, far from being absolved of all responsibility, had an obligation to secure the protection of human rights in the territory under their jurisdiction. Democratically elected Governments had an obligation to lead and to educate, and especially to promote tolerance and to prevent the incitement of racial hatred.

45. With regard to consideration of the issue of racial discrimination, there was one point that had been overlooked. That was the matter raised by Mr. Pinheiro in his proposals for the work of the World Conference, namely the denial of racism. There was also another problem in that racial discrimination was not taken into account by human rights monitoring bodies. Thus, if a journalist was killed because of his defence of a minority group, the violation committed was not simply an infringement of the right to freedom of speech; it included an element of racial discrimination. That issue should be added to the agenda for the World Conference.

46. As had been seen in the previous decade, unaddressed discrimination tended to get worse until, eventually, it endangered civil peace. Consequently, all human rights monitoring mechanisms and bodies had a responsibility to sound the alarm bell before it was too late. The World Conference or the Committee on the Elimination of Racial Discrimination should issue guidelines for those mechanisms in that regard.

47. She agreed with Mr. Yokota that it would be useful to clarify the meaning of the terms "national" and "citizen". In Great Britain, for instance, four groups of nationals shared the same citizenship, which did not present a problem. Otherwise, as had been suggested, dual nationality could help to solve the problem of certain minority groups.

48. Mr. BOSSUYT thanked the previous speakers for their suggestions concerning the preliminary report that he had submitted. As had been mentioned, the report was still rather academic, due to the fact that he had yet to receive replies to the questionnaire he had sent to Governments.

49. With regard to the comments made by Mr. Sik Yuen and Ms. Warzazi concerning the expression "favourable discrimination", he said that terminology was entirely a matter of convention. Notions could be clarified as soon as agreement was reached as to what terms should be used.

50. He expressed reservations concerning the special measures taken in Sri Lanka, to which Mr. Goonesekere had referred. He believed that it was possible to adopt special measures that were non-discriminatory. In the educational sector, for instance, special classes could be organized or study grants awarded not on the basis of ethnic criteria but according to individual needs.

51. He expressed reservations concerning the comparison made by Mr. Joinet between affirmative action and states of emergency which were considered as exceptional. In his view, there could be no exceptions to the principle of non-discrimination. Consequently, the question was not whether or not an exception could be made to that principle, but whether or not an affirmative action measure was discriminatory or not. If the answer to that question was yes, then there was a problem. Furthermore, as had been mentioned by several speakers, provisions concerning affirmative action already existed in international law.

52. Some speakers had raised the notion of affirmative action in the framework of international trade relations. It was difficult to see how that issue could be covered by his report, since it was meant to deal with human rights.

53. He said that Mr. Rodríguez Cuadros had made some very pertinent comments concerning the need to ensure that special measures were adopted with respect for democratic principles.

54. To sum up, just because a measure was described as affirmative action, that need not necessarily be the case. The priority was to make sure that it did not constitute a form of reverse discrimination.

55. The CHAIRPERSON said that, following Ms. Warzazi's proposal, approved by the Sub-Commission, a new sub-item (c) entitled World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance had been added to agenda item 3.

56. Mr. PINHEIRO, introducing his proposals for the work of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/PC.1/13/Add.1), drafted as the Sub-Commission's contribution to preparations for the World Conference, said that the Conference would be a unique opportunity to create a world strategy for the struggle against racism in the twenty-first century. Among the situations which had led to the most serious manifestations of racism in the previous decade, the following gave particular cause for concern: the explosion of ethnic conflicts and widespread violence related thereto; the widespread phenomenon of xenophobia, which was alive in various continents; and the double discrimination victimization of persons who suffered from accumulated discrimination on various grounds.

57. The Conference must address the denial of racism, which took different forms. Conflicts between groups within States also constituted a problem of such magnitude that, as Mr. Eide had suggested, a global and system-wide strategy for peaceful solutions appeared necessary. Above all, specific initiatives needed to be defined to address the provision of decent living conditions and the realization of the human rights of those populations and minorities which had been consistently denied them, even under democratic regimes. The World Conference must state clearly that the rights of persons of African descent, indigenous peoples, lower castes and national minorities were human rights.

58. Discrimination was dramatically present in the criminal justice system and colour was a powerful instrument of discrimination in the distribution of justice. From a human rights perspective, development efforts must work to eliminate racial discrimination through programmes and processes that could help Governments to reform legal systems and outlaw discrimination in employment, education, credit services and other entitlements. There was a necessity to build accountability in the exercise of the functions of police officers and members of the judiciary. The Conference must contribute effectively to finding ways to overcome discrimination by equalizing the content and application of law among the population. The collection of data on racial disparities in the justice system would also be useful.

59. The World Conference should be open to the widest possible participation of civil society, NGOs, social movements, people's organizations, organizations of indigenous peoples or minorities and organizations of women victims of racism. He had suggested a series of specific recommendations in his report concerning the participation of those organizations at the World Conference.

60. Ms. DAES, introducing her working paper on discrimination against indigenous peoples prepared, in accordance with Sub-Commission resolution 1999/20, for the preparatory meetings for the World Conference against Racism, in her capacity as Chairperson-Rapporteur of the Working Group on Indigenous Populations, said that she would read only the final recommendations thereof and make the whole of the document available to the Secretariat and the Rapporteur.

61. She recommended the establishment of a mechanism for the full and active participation at the World Conference of representatives of indigenous peoples and organizations, including NGOs without consultative status with the Economic and Social Council. The Office of the High Commissioner for Human Rights should be urged to hold a seminar on indigenous peoples and the administration of justice. During the Conference, panel discussions and round-tables, focusing on indigenous peoples and measures being taken to end discrimination, could be organized as a parallel activity to the official session. She recommended to the Advisory Group for the Voluntary Fund for the International Decade of Indigenous Populations and, through it, the High Commissioner, that funds be set aside to assist those activities as well as the participation of indigenous peoples at the World Conference. Furthermore, in accordance with Commission on Human Rights resolution 2000/56, adopted on 25 April 2000, a chapter in both the declaration and the programme of action of the final document of the World Conference should be dedicated to indigenous peoples and the expression used in that document should be "indigenous peoples". With regard to the programme of activities to be identified by the World Conference, the Working Group on Indigenous Populations should consult with indigenous participants and subsequently make practical proposals in relation to possible activities to be undertaken by Governments, the United Nations system, NGOs and civil society, including educational institutions, the media and the private sector.

62. Mr. PERERA (World Federation of United Nations Associations), speaking on behalf of the World Federation of United Nations Associations, the All India Women's Conference and the World Federation of Democratic Youth, said that the fall of economic frontiers by globalization had resulted in an unprecedented flood of migrants from poorer countries to wealthier ones. On the other hand, the successful implementation of population control policies by the industrialized North had contributed to a fall in their working-age population and in the workers/pensioners ratio. To keep that ratio at its present level, Germany, France and the United States would need to import 3.6 million, 1.8 million and 13.5 million migrant workers per year, respectively. The same trend was apparent in every continent.

63. The populations of host countries appeared to be gripped by unfounded fears that they were being swamped by a flow of immigrants for which there was no need. Those fears were intensified by the flow of false asylum-seekers and illegal immigrants. The political right made use of those fears as a means of winning votes, stirring up xenophobia among parts of the electorate. Europe was not the only continent affected by the wave of xenophobia.

64. NGOs working to protect human rights made an effort to recruit members of their secretariats from an even geographical spread in order to make sure they were genuinely representative. Consequently, they expected States in which their offices were situated to provide all the rights proclaimed in relevant international legal instruments to their staff, without

any distinction based on colour, descent, national or ethnic origin. It was worth remembering that it was thanks to the lobbying of NGOs that the Charter of the United Nations contained a number of articles concerning human rights, and particularly articles 13, 55, 56, 68 and 76.

65. With regard to immigration, political leaders had four options: (a) to explain to their reticent populations the value of migrants for their countries' economies and to organize immigration in an orderly and effective manner; (b) to cooperate with immigrants' countries of origin to prevent illegal immigration; (c) to speed up, in a fair and just manner, the investigation process of asylum-seekers; or rather, (d) to pander to the xenophobic fears of certain population sectors and withhold some of the rights and freedoms of documented immigrants. Unfortunately, some leaders had chosen the fourth option, which was why there was a need to ensure international protection for documented immigrants.

66. That protection was already provided by International Labour Organization Conventions 48, 66, 97, 128 and 143, but unfortunately, the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Their Families, having still to receive the required number of ratifications, had not yet entered into force.

67. It was very important that the question of the rights of migrant workers and their families was given a significant place on the agenda of the forthcoming World Conference against Racism in order to encourage States Members to pay sufficient attention to the issue of the urgently needed rights of migrant workers.

68. Mr. KIRKYACHARIAN (Movement against Racism and for Friendship amongst Peoples), said that, in view of the fact that the States of the European Union were required under the Treaty of Amsterdam to eliminate discrimination, he welcomed the initiative of France to set up a free telephone helpline for victims of discrimination. Since it was set up, the number of calls to that helpline had reached 2,000 per month.

69. As the Commission on Human Rights had stated in resolution 2000/40, on 20 April 2000, democracy and racism were incompatible, and democracies had a responsibility to try to determine the causes of racism in order to eradicate it. One of those causes was structural inequality, which was often accepted as inevitable. Thus, as the Sub-Commission had already heard, while it was true that in the United States African-Americans occasionally occupied senior positions, their numbers were disproportionately high in statistics on unemployment, juvenile crime and death sentences. His organization believed in the need to put forward practical solutions that could be applied on the ground, without compromising the need to make an analysis of the issue in its entirety. Central to the debate was the importance of taking structural inequality, which had been highlighted by the women's liberation movement, into account.

70. Mr. PAKHIDDEY (International Institute for Non-Aligned Studies) said that liberal democracies were to blame for perpetuating racial discrimination, evidence of which was to be found in the recent hostile reaction of certain German politicians to the prospect of Indian software engineers being recruited by German companies.

71. Despite what some Western countries said in an effort to divert attention from their own racism, the oppression of scheduled castes and tribes in India arose not from racist practices but from rigid religious attitudes. While it was true that the oppression of "untouchables" still existed, and that it was an aberration in a democratic regime which had always sought equality and social justice, the Constitution nevertheless provided for affirmative action to help the scheduled castes and tribes and, as a result, many people belonging to those groups held positions of importance and had their own political parties and representation in Parliament.

72. As a founding member of Dalit Panther, an organization which stood for the emancipation of the scheduled castes and tribes and fought for their rights, he was surprised by the suggestions emanating from some quarters in the West that the caste system was an example of racism. The occasional incidents reported by the media had been used by some NGOs to present a picture of widespread discrimination and oppression. It was a legitimate exercise to raise public awareness of the problem and essential to fight for change in Indian society, but pointless and unfair to condemn a regime without taking its achievements into account.

73. Ms. DANN (Indian Law Resource Center) said that her people, the Western Shoshone, was in the process of being dispossessed of the land on which it had lived since time immemorial. A federal agency of the United States of America had claimed that the land rights guaranteed to her people by the 1863 Treaty of Ruby Valley had been extinguished and that the land in question had become public land. A payment had been made in compensation, which prevented the Western Shoshone from pursuing legal action. They had refused the money, maintaining that their spiritual and cultural identity was inextricably linked to their land, and as such it was not for sale.

74. Furthermore, two laws had been adopted which facilitated the sale of land belonging to indigenous peoples. Given the amount of gold in the land belonging to her people, those laws would have devastating consequences for the Western Shoshone.

75. Having exhausted all domestic remedies, the Western Shoshone appealed to the Sub-Commission to review their situation prior to the World Conference and called upon the United States Government to halt all legal proceedings aimed at stripping the Western Shoshone of their land and to open discussions with the leadership of her people with a view to finding solutions.

The meeting rose at 1.05 p.m.